

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON DC 20460

FEB - 7 1992

MEMORANDUM

SUBJECT: Issuance of Guidance on the "Timely and Appropriate
Enforcement Response to Significant Air Pollution
Violators"

FROM: John S. Seitz, Director (signature)
Office of Air Quality Planning & Standards

Robert Van Heuvelen (signature)
Acting Director of Civil Enforcement

TO: Air, Pesticides and Toxics Management Division
Directors
Regions I and IV

Air and Waste Management Division Director
Region II

Air, Radiation and Toxics Division Director
Region III

Air and Radiation Division Director
Region V

Air, Pesticides and Toxics Division Director
Region VI

Air and Toxics Division Directors
Regions VII, VIII, IX and X

Regional Counsels
Regions I - X

In June of 1989, the Agency recognized the need for making a substantial revision to the Agency's Significant Violator and Timely and Appropriate Guidances. A workgroup was formed consisting of Branch Chiefs from Regions II, III, V, VII, and IX representatives from SSCD and AED to develop a revised guidance document (Attachment I). The Penalties Section, which establishes a new standard for Federal overfiling, was developed by the State/Federal Penalties Workgroup chaired by the Air Enforcement Division (AED) with representatives from STAPPA/ALAPCO and EPA Regions and Headquarters. This document has been thoroughly reviewed and commented upon by representatives of other Regional Offices, STAPPA and ALAPCO. A summary of these comments and responses is presented in Attachment II.

The subject guidance supersedes and consolidates previous Clean Air Act guidance related to Significant Violators (SVs), Timely and Appropriate (T&A), and Federally Reportable Violations (FRV). Specifically, this document supersedes all previous guidances on the three subjects.

This guidance applies to all "major" (as defined by the CAAA) stationary sources of air pollution which are in violation of a Federally-enforceable regulation. Note that a revision of the definition of SV was necessitated by the new emphasis placed by the CAAA upon continuous compliance by all major sources. Thus the new SV universe includes all of the present significant violators and other environmentally significant violators of concern to the EPA or State agencies. 1 We recognize that this may represent a substantial increase in the number of SVs over the number that would have resulted from the previous definition of Significant Violator, but this revision was necessary to address significant air quality concerns of the new Act.

This guidance is being revised largely to encourage a greater degree of team-building and cooperative resolution of Significant Violators by all responsible agencies, to encourage agencies to give priority attention to those violators which they believe are most environmentally important, and to permit an increased degree of agency flexibility in identifying and resolving SVs.

This guidance is designed to foster the development of a more complete and accurate compliance picture, regardless of the short-term resource implications. It is EPA's position that by portraying a more complete and accurate compliance picture, agencies will be more likely to address the most environmentally important violators first, and will have a better opportunity to receive appropriate resources to complete the task.

Further, this guidance has been revised to more accurately reflect the time and resources necessary to bring major sources into a state of continuous compliance. To that end, the timeline for addressing a SV has been lengthened by 30 days (to 150 days) and an optional prioritization procedure has been added to help agencies focus their resources upon the most environmentally significant SVs. A prioritization procedure **must** be used in all instances where an agency is unable to address **all** of its SVs in a "timely and appropriate" manner, and at any other times when it so chooses. The Agency recognizes that some of the highest priority SVs may require substantially more time and resources to resolve than a routine SV. Situations where this guidance will not be met should be noted qualitatively in the routine quarterly reports to EPA Headquarters.

This guidance, by agreement of the parties, will be implemented starting at the beginning of the third quarter of FY 1992. During the remainder of the first and second quarters, each agency should compare all of the currently outstanding SVs (not including any SVs for which the agency has already initiated action) with this revised guidance. On the basis of this review,

each agency should report a "revised SV list" to SSCD, and revise its AFS database accordingly.

Please feel free to contact John Rasnic of the Stationary

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- 1 ~"State" as used throughout this paper also refers to local agencies where they have enforcement authority.

Source Compliance Division or Michael Alushin of the Air Enforcement Division if you have any questions or comments on this document. John may be reached at (703) 308-8600 commercial or FTS 678-8600. Mike may be reached at FTS 260-2820.

Attachments

cc: S. William Becker, Executive Director
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John Calcagni, Director
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ATTACHMENT I

GUIDANCE ON THE TIMELY AND APPROPRIATE (T&A) ENFORCEMENT RESPONSE
TO SIGNIFICANT AIR POLLUTION VIOLATORS (SVs)

I. SCOPE AND SUMMARY OF GUIDANCE

A. Applicability

This guidance supersedes and consolidates previous guidance documents related to Significant Violators (SV), Timely and Appropriate (T&A), and Federally Reportable Violations (FRV). Specifically, this document supersedes the following guidance documents: (1) Definition of SV Contained in "EPA Accountability System -- OANR Policy Guidance", dated December 29, 1981; (2)

"Significant Violators", dated June 24, 1982; (3) "Definition of Significant Violator for PM10", dated September 23, 1988; (4) "Timely and Appropriate Enforcement Response Guidance", dated April 11, 1986; and (5) "Guidance on Federally-Reportable Violations for Stationary Air Sources", dated April 11, 1986.

B. Summary of Guidance

This guidance applies to all "major" (as defined by the Clean Air Act Amendments of 1990 (CAAA)) stationary sources of air pollution which are in violation of a Federally-enforceable regulation. Note that the guidance also applies to emergency episodes or sources which construct without a valid permit. However, the timelines for resolution of such violations are substantially shorter than specified in this document. Similarly, this guidance applies to violators of asbestos demolition and renovation (D&R) regulations. However, the specific definition of SV, prioritization criteria and timelines for resolution of such violations will be found in a future Attachment to be incorporated into this document.

Once a violator is detected, the agencies shall take the following five actions:

1. The "finding" agency shall determine whether or not the source is a Significant Violator.
2. A NOV/FOV shall be issued (preferably by the State) to each SV within 45 days of such determination. 1
3. The EPA and State shall jointly determine which has the initial lead in addressing the SV.
4. The lead agency shall routinely address each SV as it is identified. However, if the agency is unable or unwilling to do so in a manner consistent with the timelines section of this guidance, the lead agency shall use the following optional approach. It shall first prioritize all of the SVs as outlined in Appendix A prior to initiating action against the highest priority SV. (However, to the extent the available timeframe for using Administrative Penalty authority is running out for a particular SV, the EPA may move against that SV in order to avail itself of the advantages of an administrative action.)
5. EPA shall add the newly designated SV to the SV list.

This guidance recognizes the importance of addressing the significance of penalties when resolving SV cases. Consistent with the recommendations from the "State/Federal Penalties Workgroup", EPA expects that agencies will obtain an appropriate penalty (including one to offset the source's economic gain) whenever it resolves a SV.

1. While EPA expects that States will address violations of air pollution regulations within their jurisdictions, except for non-

delegated Federal standards, by focusing on a limited group of violators (e.g., those targeted by this guidance), this guidance is not intended to detract from the importance of addressing other violators and the right and responsibilities of the States and EPA for doing so.

2. This guidance articulates the mutual expectations of the respective parties of the Federal - State partnership in the enforcement of air pollution control requirements for stationary sources. It is fully expected that this guidance will be modified and expanded in future years to reflect experiences in its implementation and the evolution of the air program itself.

"State" as used throughout this paper also refers to local agencies where they have enforcement authority.

3. In accordance with the Deputy Administrator's memorandum of April 9, 1984 on Forging an Effective State/Federal Enforcement Relationship, this national guidance will serve as the framework for State specific agreements reflecting the parties' mutual expectations. As that memorandum states, "the Regions will have to accommodate differences among States, for example, where their administrative procedures require different timelines for enforcement action."

II. PHILOSOPHY OF GUIDANCE - DEFINITION OF SV

Agency Significant Violator activities shall be designed to identify and to expeditiously return to compliance those violating sources which the agency believes are environmentally most important, namely the SVs. Although this guidance requires agencies to address all Significant Violators, EPA recognizes that agencies may be unable to address all of them immediately. Each agency shall return all SVs to compliance in accordance with the Timely and Appropriate section of this guidance. Optionally the agency may utilize a quantitative targeting and prioritization procedure (similar to the one shown in Appendix A) whenever there are more SVs than there are resources available to address them consistent with the T&A section of this guidance.

A Definition of a Significant Violator (SV)

Agencies shall deem a source to be a Significant Violator if it is:

1. A "Major" source (as defined by the CAAA, except for asbestos D&R NESHAP), and it violates any one or more of the following:

- a. SIP emission, monitoring or substantial procedural requirements, regardless of pollutant designation status.

- b. NSPS emission, monitoring or substantial procedural requirements.
- c. NESHAP emission, monitoring or substantial procedural requirements for existing NESHAP standards and promulgated MACT requirements.
- d. SIP, NSPS or NESHAP emission, procedural or monitoring requirements violated repeatedly or chronically (e.g., exceeds emission limit or gets no continuous monitoring data for 5% or more of the time in a calendar quarter).
- e. Any provision of a Federal Consent Decree or Federal Administrative Order.
- f. Any substantive provision of a State Judicial Order or a State Administrative Order which was issued for an underlying SIP violation.
- g. Any requirement of Part C or Part D of Title I of the CAAA (e.g., new construction of a major source, major modification of a major source).

2. Any synthetic minor source, and it is in violation of any one or more of the following:

- a. Avoiding PSD while violating an emission limit or permit condition which affects the PSD status.
- b. Exceeding its permitted emission standard above the amount that would classify the source as a nonattainment area major source.

With respect to emergency episodes or sources which construct without a valid PSD or Part D permit (where one is required), the timelines delineated below do not pertain. In the case of emergency episodes, the seriousness of the violation would normally require expedited action. In the case of a source constructed without a required PSD or Part D permit, options for obtaining relief may be foreclosed by allowing the source to continue to construct and, therefore, expedited action may be essential.

PROCESSING OF SIGNIFICANT VIOLATORS

A. Agency Communications Concerning SVs

As soon as possible (at least within one month) after an agency initially detects a violation at a potential significant violator, that agency shall communicate the compliance status of that source to all other agencies which are responsible for bringing and maintaining that source into continuous compliance (e.g., State to EPA, or EPA to State). Such communications shall be performed to:

- 1. Develop and maintain a common, agreed upon list of SVs;
- 2. Determine, on a case by case basis, which agency is best suited

to take the initial lead in addressing this SV; 2

3. Ensure that the SVs are returned to compliance, consistent with the T&A section of this guidance; and

4. Foster a cooperative "team-building" spirit among all of the involved agencies.

B. Processing of Significant Violators

Once a violation is detected, the agencies shall take the following five actions:

1. The "finding" agency shall compare the source's characteristics with the definition of SV contained in this guidance. To the extent that the violator fits one or more of the elements of the definition, it shall be designated as a "Significant Violator" and is subject to the Timely and Appropriate section of this guidance.

2 Determining which agency will "take the initial lead" should be through mutual agreement between the agencies, on a case-by-case basis. Examples of the criteria which may be used in making the determination include, but are not limited to: agency authority and policies, particularly with respect to penalties; agency expertise with the specific processes controls, or monitors; whether or not the violator's characteristics meet those highlighted by a national/State "initiative"; and availability of resources. Normally the State agency will be given the initial lead.

•2. Within forty five (45) days after designation of the violator as a SV, a NOV or FOV shall be issued (by the State preferably) to each SV, regardless of which agency has the lead.

3. The State agency and the EPA Regional Office shall jointly decide which agency will take the lead in resolving the SV.

4. As resources become available, the lead agency shall routinely address each SV as it is identified. However, if it is unable or unwilling to do so in a manner consistent with the T&A section of this guidance, the lead agency shall use the following optional approach. It shall first prioritize all of the SVs prior to initiating action against the highest priority SV. The agency shall use a prioritization procedure similar to the "Table of Criteria and Environmental Weighting Factors" (Appendix A) to determine its priority relative to other outstanding SVs. As resources become available, the highest priority (at that time) SV shall be addressed. Once the agency initiates any type of enforcement activity related to a SV, it shall not interrupt this activity, even if a higher ranked SV is subsequently identified. Note that the prioritization step is not related to EPA assumption of responsibility for a State's SV; it is simply a means of ensuring that the most environmentally important SVs are addressed in a timely and appropriate manner.

5. EPA shall add the source to its SV list for agency tracking and reporting.

C. EPA Maintains Enforcement Authority

The Clean Air Act vests responsibility for enforcement of the law in EPA. Therefore, EPA may move independently with respect to designation of a violator as a "Significant Violator", and EPA shall assume the lead in cases when it becomes apparent that the State is unable or unwilling to act in accordance with this guidance to resolve a violation in a timely and appropriate manner.

IV. T & A TIMELINES FOR ENFORCEMENT ACTION

All SVs, except emergency episodes and sources which construct without a valid PSD or Part D permit (where one is required), are subject to the following timelines and penalty requirements (see section V below). The timeline for enforcement actions is generally the same for significant violators discovered by EPA as for those discovered by a State, regardless of which agency takes the initial lead. The only exception is for the unusual situation in which EPA assumes the lead from a State. If EPA does take over the lead, it receives up to an additional 100 days to address the SV. 3

3 This guidance provides EPA Regional Offices up to 100 additional days to address a SV after it assumes the lead from a State. It should not need 150 days like it would in a normal situation. This is based upon the assumptions that EPA has closely tracked the State enforcement activity and data gathering, and will be able to rely upon the fact that the State's NOV started the penalty clock. (As stipulated in the CAAA of 1990, taking formal action, e.g., issuing an NOV/FOV, shifts the burden of proof of continuous compliance to the source, and "starts the penalty clock".)

A separate (new) timeline will be established for any additional violations discovered at an existing SV before it has been fully resolved.

A. Day Zero

The clock starts (i.e., day zero) 30 days after the discovering agency first receives information concerning a Federally enforceable violation (e.g., date of inspection, stack test or continuous emission monitoring system report). If, during this 30-day period, the enforcement agency decides that additional monitoring or analysis is required to determine or confirm the violation, the clock does not start until the earlier of the date of receipt of such additional data or on the 90th day after the violation was initially discovered. This additional period (up to 60 days) provides sufficient time for agency evaluation of the data to determine if a Federally enforceable violation occurred.

B. Day 45 - Routine Issuance of NOV/FOV and EPA Tracking

Unless the State agency requests that EPA issue the notice, by Day 45 the State agency shall routinely issue a NOV (if required for SIP sources), or a FOV (for non SIP sources) to the source. 4

If the State has not taken such action, EPA shall immediately issue an appropriate notice. 5

Any EPA-issued NOV or FOV, in a case where the State has the lead, will indicate that EPA is still looking to the State to resolve the matter, and further EPA action will be required only in the absence of an acceptable, prompt resolution by the State.

The issuing office will transmit a copy of any NOV or FOVs it issues to other agencies in whose jurisdiction the source is located. If the violation clearly impacts upon the air quality of an adjacent State, EPA will also transmit a copy of the NOV or FOV to that State as well.

Also, EPA should add this source to its list of SVs for Agency tracking and reporting purposes.

4 "Routine issuance of a NOV/FOV" is required here because this starts the penalty clock against the violator, and shifts the burden of proof, to demonstrate continuous compliance, to the source, (42 U.S.C. Section 7413 (e)(2)).

5 "Routine EPA issuance of a NOV/FOV" is specified here, not as an indication, in any way, that State agencies are incapable of getting the job done. This requirement is placed upon EPA Regional Offices because it has been noted that many sources do not seriously work to resolve their violations until after EPA puts them on formal notice and starts the penalty clock.

C. Day 90 - Possible EPA Case Action

If the State has the initial lead, and none of the actions specified in E (below) have occurred by Day 90, EPA will discuss with the State the status of the State's actions and its expectations. If discussions with the State suggest that the State is close to addressing or resolving the violation or that further deferral is otherwise appropriate, EPA will continue to defer to enable the State to complete its action. If EPA determines that further deferral is not justified, it will proceed with its own action at this point.

D. EPA Responsibilities After It Assumes the Lead

After EPA assumes the lead in a case, it will have up to an

additional 100 days to get the source into compliance, onto a schedule, issue a Section 113(a) administrative order (including administrative remedies), a Section 113(d) administrative enforcement action, or subject the source to a Section 120 action or judicial referral. EPA will encourage continued State participation even in situations where EPA takes over the lead. The possibility of a joint action should be considered as an alternative to a unilateral EPA action where feasible.

E. Day 150 (no lead change) or Day 190 (lead change)

By Day 150 (or 190 with lead change), the source shall either be in compliance (RESOLVED), or ADDRESSED i.e., on a legally-enforceable and expeditious administrative or judicial order, or be subject to a referral to the (State) attorney general or (Federal) Department of Justice for an adjudicatory enforcement hearing or judicial action.

F. Resolved versus Addressed

As indicated above, the term RESOLVED shall mean that the source is returned to COMPLIANCE. Thus after the case has been addressed as per Part E (above), EPA and the State will continue to track the source. Note that the source remains on the SV list (but not carried in STARS) until it is returned to compliance (RESOLVED). Follow-up may be required in one of the following outcomes once the case has been addressed: if a schedule is established, the State will monitor compliance with that schedule and report on progress in accordance with established reporting requirements; if a referral is made, EPA will continue to monitor the progress of the case to and after filing; and if a case becomes unduly delayed, EPA will discuss this with the State and may choose to initiate a parallel Federal action. No formal timelines are being established for this stage of the enforcement process, however.

V. PENALTIES

EPA's national goal is to have all federal, State and local enforcement actions for Clean Air Act violations assess a penalty sufficient to achieve effective deterrence for the source subject to enforcement and for the regulated community as a whole. EPA assesses penalties in federal Clean Air Act actions pursuant to the Clean Air Act stationary source Civil Penalty Policy. Under the EPA penalty policy, both the economic benefit of noncompliance and a gravity component reflecting the seriousness of the violation are calculated. This calculated penalty may then be adjusted where appropriate for several factors including the risks involved in litigating the enforcement action and the violator's ability to pay a penalty.

All State and local agency enforcement actions should also assess civil penalties of sufficient magnitude to maintain a credible deterrent effect. To accomplish this goal, State and local enforcement agencies should calculate (where possible) and assess

the economic benefit of noncompliance. In some cases, the risks involved in litigating the case or the violator's inability to pay a penalty may justify not assessing a penalty which recaptures the full economic benefit. Legitimate litigation risks include adverse legal precedent and evidentiary problems. The inability of a violator to pay a penalty must be demonstrated by the violator through financial information analyzed by State or local environmental enforcement personnel.

An additional amount reflecting the seriousness of the violation should also be assessed. This is especially important for violations which may not have a readily calculated economic benefit but which are critical to program integrity, such as monitoring, reporting, recordkeeping and testing violations. In some cases, this additional amount may be adjusted to reflect the violator's history of compliance with air pollution laws and regulations, and the source's good faith efforts to comply. All penalty calculations in State and local enforcement actions must be documented in the appropriate case file.

EPA will consider overfiling when State or local penalties fail to meet these criteria, taking into account available federal resources and enforcement priorities.

State and local enforcement agencies are strongly encouraged to increase the statutory maximum civil penalty authorized by State or local law to at least \$10,000 per day per violation as required by Title V of the Clean Air Act, as amended, for an approved operating permits program. States and municipalities with penalty authority of less than \$10,000 per day per violation will be subject to more intensive EPA oversight and potential overfiling.

State and local enforcement agencies are also strongly encouraged to develop a penalty policy implementing these general penalty criteria. EPA will then review and evaluate, but not formally approve, these penalty policies for consistency with the general penalty criteria. A State or local enforcement agency which adopts a sound penalty policy implementing these penalty criteria and demonstrates a pattern of adherence to it will receive less case-specific EPA oversight. A State or local enforcement agency which chooses not to develop a penalty policy or which has a penalty policy that is not consistent with these penalty criteria will continue to be subject to significantly more intensive case-specific EPA review of State and local penalties and to potential overfiling.

State and local enforcement agencies are also encouraged to use the BEN computer model developed by EPA to calculate the economic benefit of noncompliance. State and local enforcement agencies which use the BEN computer model or a similar model to calculate economic benefit will receive less intensive EPA case-specific oversight.

VI. CONSULTATION AND DATA TRANSFER

A. Informal Consultation

EPA and States should conduct frequent (at least monthly) informal consultations to discuss compliance efforts. During these discussions, information exchange relative to obtaining compliance and penalties should occur. This exchange should include at least the following items:

1. The State and EPA would each identify any newly-found violators subject to this guidance.
2. The State and EPA would each identify sources notified of noncompliance during the month.
3. 3. The State and EPA would each identify violators where action had been taken.
4. The State would discuss the status of other enforcement actions pending or in progress, if requested by EPA.
5. EPA would identify sources for which it had completed action and provide the status for other sources where action is pending or in progress.
6. EPA would identify any sources it had found in violation and confer with the State as required above .

B. Updating EPA's Compliance Databases

The AIRS Facility (and/or NARS, as appropriate) databases will be updated by EPA and/or the State on a monthly basis to reflect:

1. Compliance status changes for newly-identified violators which are in violation on the last day of the month prior to the consultation, and which were (or are expected to be) in that status for 7 days or more.
- 2 Sources notified of noncompliance.
3. Sources with completed enforcement actions, including any - schedules and incremental dates for returning to compliance.
4. Sources found to be in compliance with final limits.

C. Provide Inspection Results

Inspection results other than those affected by the above will be provided in accordance with current practices and EPA accountability system requirements.

EPA and the State will share inspection results and other monitoring reports (e.g., stack tests, CEMS) for use in enforcement proceedings to the extent practicable. State personnel should be encouraged to provide evidence, including

testimony, for Federal proceedings. Federal personnel should similarly support State enforcement proceedings.

APPENDIX A

TABLE OF CRITERIA AND ENVIRONMENTAL WEIGHTING FACTORS (See original)

ATTACHMENT II -

SUMMARY AND RESPONSE TO COMMENTS

COMPLEXITY & BURDEN ISSUES:

- o Cost/benefit of the ranking procedure is not favorable; e.g., too complex, subject to duplication and subject to confusion among the different agencies using it (STAPPA/ALAPCO).

Response:

- It is important to have "joint" decisions throughout the process (e.g., promotion of dialogue and team-building, and case-by-case determination of which agency takes the lead makes the most effective use of agency resources, expertise and national priorities).

Prioritization and ranking activity was simplified (e.g., agencies which are able to address all SVs consistent with the T&A requirements, can opt out of using any prioritization procedure).

- o Virtually all violations will be rated as "major" and thus subject to the guidance (STAPPA/ALAPCO).

Response:

- The question suggests a little confusion about the language contained in the document. Whether a source is "major" or not is established by the CAAA of 1990. Therefore, by definition, all SVs must first be a "major" source. Subjecting all "major" sources with violations to this guidance is consistent with the mandate expressed in the CAAA of 1990. All other violators will be addressed, as they have in the past, in the most expeditious manner possible.

SSCD, with assistance from the Regional Offices and STAPPA/ALAPCO, has taken the impact of this revision upon

agencies into account as we revised it. It was our goal to establish criteria in a manner which fosters agency reporting of the complete and accurate picture of the compliance status of major stationary sources, and which forms a quantitative basis for agency resource consideration.

- o Development of mutually agreeable definitions of SVs obviates the need for the weighting scheme; retain the present T&A Guidance with minor adjustments (STAPPA/ALAPCO).

Response:

- The use of a "fixed", nationally consistent definition for SVs although expanded to include a larger number of sources and additional emphasis on continuous compliance (both consistent with the CAAA of 1990), has been retained to a large degree in this revision.

TABLE. EXAMPLES & SV THRESHOLD VALUE ISSUES:

- o Clarify that agencies may use either the attached "Table" (or a "comparable" one) to prioritize and rank their SVs (Regional Offices).

Response

SSCD, after much consideration, agreed to permit this level of flexibility. However, it is incumbent upon all agencies to take steps to ensure that all environmentally significant SVs are addressed in a timely and appropriate manner.

- o Making miscellaneous "adjustments" (e.g., additional categories, different weights, changing actual excess emissions to estimated emission rates, possibly providing factors for violators in non-attainment areas) to the Table Of Criteria and the SV designation threshold are necessary (Regional Offices).

Response:

- The revised text addresses the flexibility of using a comparable table.
- o Clarify and expand the "Examples" in the Attachment (Regional Offices).

Response:

SSCD revised the text.

ENFORCEMENT ISSUES:

Specify what a "Violation" is, e.g., similar to that on pages 3 and 4 of the earlier "Federally Reportable" document (Regional Offices).

Response:

SSCD considered this possibility and decided the text was sufficiently clear.

Insufficient emphasis was placed upon penalties required by agencies to try to offset economic gain resulting from delayed compliance (Air Enforcement Division of EPA).

Response:

This revision incorporated the specific recommendations made by the "State/Federal Penalties Workgroup".

- o Insufficient emphasis was placed upon the advisability and desirability of issuing a NOV/FOV at the earliest possible date (Regional Offices).

Response:

SSCD revised the text to reflect the relevant provisions contained in the CAAA of 1990, specifically the shifting of the burden of proof from an agency to the violating source.

- o Emphasize the importance of properly protecting case-related and other confidential information (Regional Offices).

Response:

This is an important point. However, it is not germane to the subject of this document.

- o Clarify how one should address sources which drift into and out of violation during the month. (Regional Offices).

Response:

- In addition to the line item in the Table (#5 - "chronic violator"), the text was revised to use language similar to that contained in the old "Federally Reportable Guidance."
- o Clarify that once an agency initiates any action on a SV, it should complete it regardless if a higher ranked SV is subsequently identified before the first one is resolved (Regional Offices).

Response:

SSCD revised the text accordingly.

Emphasis upon "consultation" implies that EPA does not retain the ultimate responsibility and authority to make decisions relevant to federal enforcement (Regional Offices).

Response:

SSCD revised the text to reflect the fact that EPA retains the ultimate responsibility to insure compliance with federally enforceable requirements (e.g., determining that a violator is a SV).

- o Clarify the difference between "addressed" and "resolved" as it pertains to sources which come into compliance before they are addressed (Regional Offices).

Response:

SSCD revised the text.

- O Clarify which violations require a penalty as part of its resolution, e.g., PSVs versus SVs only (Regional Offices).

Response:

SSCD revised the text. (Note, the PSV concept (potentially significant violators) was dropped.)

COMPATIBILITY WITH OTHER GUIDANCES ISSUES:

- O The "ranking factors" listed in this document should be totally comparable with those delineated in the CMS (Regional Offices).

Response:

Conceptually perhaps they should be, and over time the two sets of factors will likely converge. The final "example" table contains the concensus of all commenters.

- o Clarify the relationship between this guidance and field citations (Regional Offices).

Response:

Other than being one form of administrative penalties, there is no direct relationship. However, as such it could be one of the ways SVs are resolved in the future.

GENERAL CLARIFICATION ISSUES:

Clarify how many days EPA has to address an SV after it takes it over from a State (Regional Offices).

Response:

SSCD revised the text as necessary.

Delineate which source categories are designated "major" in this guidance. How this relates to: (1) "affected facilities" in Title

IV; and (2) Title III area sources? (Regional Offices)

Response:

All sources affected by Title IV and "major" sources under Title III are considered "major" for purposes of this guidance. "Area sources" under Title III are not major sources by definition in the CAAA.

Adequately support this guidance's implementation, including: (1) scheduling Regional workshops performed by SSCD; (2) designation of Regional and HQ "SV/T&A Coordinators"; and (3) scheduling periodic teleconferences (Regional Offices).

Response:

SSCD recognizes the importance of providing sufficient and timely support when we "launch" this revised guidance. We are contemplating how to most effectively do this. During the last workgroup discussion, many good suggestions were made. SSCD intends to implement many of these.